A

LEMBAGA MINYAK SAWIT MALAYSIA v. ARUNAMARI PLANTATIONS SDN BHD & ORS AND ANOTHER APPEAL

FEDERAL COURT, PUTRAJAYA
RAUS SHARIF PCA
ABDULL HAMID EMBONG FCJ
B SURIYADI HALIM OMAR FCJ
HASAN LAH FCJ
ZAINUN ALI FCJ
[CIVIL APPEALS NO: 01(f)-4-03-2013(W) & 01(f)-5-03-2013(W)]
9 JULY 2015

C

CONSTITUTIONAL LAW: *Legislation – Validity of impugned legislation – Minister of Plantation, Industries and Commodities issued Malaysian Palm Oil Board (CESS) (Oil Palm Fruit) Order 2007 (2007 Order) under s. 35 of Malaysian Palm Oil Board Act 1998 ('Act') – Collection of cess via 2007 Order – Respondents*
D *challenged validity of 2007 Order – Whether 2007 Order was ultra vires Federal Constitution – Whether s. 35 was valid tax statute – Whether s. 35 empowered Minister to impose cess via subsidiary legislation – Whether s. 35 contravened art. 96 of Federal Constitution – Whether imposition of cess on class of parties was a form of discrimination – Whether there was nexus between basis of classification*
E *and object of law – Whether collection of cess for purposes of subsidising price of cooking oil was within purpose of Act*

By virtue of the Malaysian Palm Oil Board (CESS) (Oil Palm Fruit) Order 2007 ('order'), oil palm producers who owned oil palm holdings, which were not less than 40.46 hectares, were required to pay the Malaysian Palm Oil
F Board ('the Board'), the first appellant, a cess for every metric ton of crude oil. The cess collected was to be utilised to compensate the losses incurred by the producers and packers of cooking oil by reason of the increase in the price of crude oil and to stabilise the price of cooking oil. The Minister of Plantation, Industries and Commodities ('the Minister'), the second
G appellant, had issued the order under s. 35 of the Malaysian Palm Oil Board Act 1998 ('the Act'). The respondents, who were the oil palm owners subjected to the order, challenged the legality of the order on the grounds that, *inter alia*, it was *ultra vires* the Federal Constitution ('the Constitution'), in particular arts. 96 and 8. It was the respondents' case that s. 35 of the Act,
H which empowered the second appellant to impose cess *via* subsidiary legislation was *ultra vires* art. 96 of the Constitution, which made it clear that no tax could be imposed except by or under the authority of a Federal law. The respondents thus prayed for the order to be declared void and for a refund of the cess collected. The trial judge decided that the order was *ultra vires* and consequently void and illegal but did not order the refund of the cess
I collected. Both parties appealed against the decision of the High Court. The respondents appealed over the failure of the High Court to order the refund of the cess paid, while the appellants' appeal was over the declaration that

the order was *ultra vires* the Act and thus invalid. The Court of Appeal agreed with the trial judge in that under s. 35 of the Act, the cess collected could only be used by the Board for the purpose set out under s. 33 of the Act and since the use of the cess to subsidise the price of cooking oil was not one of those purposes, the order was *ultra vires* and consequently void and illegal. Further, the Court of Appeal was of the view that although tax could be imposed by way of subsidiary legislation, the taxation statute should have three components of tax law, namely the subject of the tax, the person liable to bet the tax and the rate which the tax is to be paid. However, the Court of Appeal opined that s. 35(1) of the Act was silent on the person who was to be charged with tax and instead delegated the identity of the person to be subject to tax to the Minister and this in turn amounted to the identification of the person to be charged with tax to the Minister without the authority of the Federal law, which was prohibited by art. 96 of the Constitution. The Court of Appeal also found the order to be a piece of discriminatory law because it singled out a particular class of persons for the imposition of the cess. As such, the Court of Appeal dismissed the appellants' appeal but allowed the respondents' appeal by ordering the appellants to refund to the respondents the cess collected with interest at the rate of 4%. The appellants have now been granted leave to proceed with the instant appeal. The issues to be determined in this appeal were (i) whether s. 35 of the Act was a valid taxing statute; (ii) whether the imposition of cess on a class of parties was a form of discrimination and therefore a breach of art. 8 of the Constitution, and (iii) whether the collection of cess under the order for the purpose of subsidising the price of cooking oil was within the listed purposes of s. 33 of the Act.

Held (allowing appeal with costs):

(1) The same reasoning that was applied by this court in the *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd & Anor* (*'Premium*'s case'), was adopted and applied to the present case concerning whether s. 35 of the Act is a valid taxing statute. It is an undeniable fact that the cess statutorily imposed under s. 35(1) of the Act is a duty, which is a form of tax as defined by the Constitution. In *Premium*'s case it had been explicitly acknowledged that the three components of tax law need not be specified in the Act and could be made by way of an order. In the present case, the Act authorised the making of an order that could specify the nature, amount and rate of the cess, person or class of persons on whom the cess is imposed and the manner of collection of the cess thus fulfilling the three components of tax laws. It was not necessary that the classification should always appear on the face of s. 35 of the Act itself. (paras 29, 32 & 34)

(2) The understanding of the Court of Appeal that the components of tax law should be specifically stated in the Act did not accord with the view taken by this court in *Premium*'s case. In *Premium*'s case it was made

abundantly clear that the specification of those matters pertaining to the authority and power to impose and collect cess could be made by way of subsidiary legislation, which had been delegated to the executive by federal law. Thus, the order which was issued by way of subsidiary legislation pursuant to s. 35 of the Act was comprehensive enough to cover the tax law components. Paragraph 2 of the order defined the producers of oil palm product as those who produce the products defined under s. 2 of the Act. This would cover the class of persons on whom the cess was imposed. The manner of collection of cess was reflected in paras. 4 and 5 and the rate of cess to be collected was specified under para. 3 of the order. Thus, it was clear that the Minister had complied with all the legal requirements imposed by s. 35 of the Act and that the order made thereunder had not contravened art. 96 of the Constitution. (paras 31 & 35-37)

(3) Equality before the law as guaranteed by art. 8 did not mean that all laws had to be general in character and universal in application. The Legislature could make laws in respect of a group or a class of persons provided that the classification was rational, there was an object sought to be achieved by that Act and there was a nexus between the basis of classification and the object of the Act. In the present case, cess was only imposed on those who owned oil palm estates of an aggregate of 40.46 hectares or more or who had a higher bargaining power, and were clearly not similarly situated or circumstanced as those with smaller estates. The purpose of imposing cess on the private estates was to alleviate the financial problems faced by the producers and packers of cooking oil by reason of the increase in the cost of crude price oil, resulting in the increase of the price of cooking oil. Thus there existed a nexus between the basis of classification and the object of the law, which was to cater for those who owned bigger oil palm holdings and made more profit from the high crude palm oil price than those who did not, which was for the purpose as stipulated under s. 33 of the Act. As such, the dissimilarity in circumstances was not essentially arbitrary but to achieve the socio-economic aspects of the oil palm industry, and thus not a violation of art. 8 of the Constitution. (paras 45-51)

(4) In considering the proper statutory construction of a taxing statute, one which would promote the purpose of the Act in question should be adopted. The Minister's power in the present case, which was to impose cess for the purpose of subsidising the price of cooking oil, should be viewed against the background, scheme and circumstances under which the order was promulgated. In this regard, it was clear that the Act had given the Minister enough guidance in the use of his discretion to decide whether cess could be collected to subsidise the price of cooking oil. This would further strengthen the fact that s. 35 of the Act could not be read in isolation from the rest of the provisions of the Act to understand the purpose behind the imposition of cess on oil palm products to

stabilise the price of cooking oil. Upon a careful examination of the Act as a whole it became apparent that it was the function of the Board to not only regulate but also promote all activities in the oil palm industry. Thus, the Minister had the authority to stabilise the price of cooking oil through the imposition of the cess. (paras 64, 69 & 70)

Bahasa Malaysia *Translation Of Headnotes*

Menurut Perintah Lembaga Minyak Sawit Malaysia (SES) (Buah Kelapa Sawit) 2007 ('perintah'), pengeluar kelapa sawit yang memiliki pegangan kelapa sawit yang tidak kurang daripada 40.46 hektar dikehendaki membayar Lembaga Minyak Sawit Malaysia ('Lembaga'), perayu pertama, ses bagi setiap tan metrik minyak mentah. Ses yang dikumpul akan digunakan untuk menggantikan kerugian yang dialami oleh pengeluar dan pembungkus minyak masak disebabkan oleh kenaikan harga minyak mentah dan untuk menstabilkan harga minyak masak. Menteri Perusahaan Perladangan dan Komoditi ('Menteri'), perayu kedua, telah mengeluarkan Perintah di bawah s. 35 Akta Lembaga Minyak Sawit Malaysia ('Akta'). Responden-responden, yang merupakan pemilik-pemilik kelapa sawit tertakluk kepada perintah, mencabar kesahihan perintah, antara lain, dengan alasan bahawa ia adalah *ultra vires* Perlembagaan, khususnya per. 98 dan per. 8 Perlembagaan Persekutuan ('Perlembagaan'). Ia adalah kes responden-responden bahawa s. 35 Akta, yang memberi kuasa kepada perayu kedua untuk mengenakan ses melalui perundangan subsidiari adalah *ultra vires* Perlembagaan, yang menyatakan dengan jelas bahawa tiada cukai boleh dikenakan kecuali oleh atau di bawah kuasa undang-undang Persekutuan. Oleh itu, responden-responden memohon agar perintah tersebut diisytiharkan tidak sah dan pemulangan bayaran ses yang dikumpul. Hakim bicara telah mengisytiharkan perintah sebagai *ultra vires* dan seterusnya tidak sah dan salah di sisi undang-undang tetapi tidak memerintahkan pemulangan bayaran ses yang dibayar. Kedua-dua pihak merayu terhadap keputusan Mahkamah Tinggi. Responden-responden merayu atas kegagalan Mahkamah Tinggi untuk memerintahkan pemulangan bayaran ses yang dikumpul, manakala rayuan perayu-perayu adalah mengenai pengisytiharan bahawa Perintah adalah *ultra vires* Akta dan dengan itu tidak sah. Mahkamah Rayuan bersetuju dengan hakim bicara bahawa di bawah s. 35 Akta ses yang dikumpul hanya boleh digunakan oleh Lembaga untuk kegunaan seperti yang dinyatakan di bawah s. 33 Akta dan oleh kerana penggunaan ses untuk memberi subsidi kepada harga minyak masak adalah bukan antara salah satu tujuannya, perintah adalah *ultra vires* dan seterusnya tidak sah dan salah di sisi undang-undang. Di samping itu, Mahkamah Rayuan berpendapat bahawa walaupun cukai boleh dikenakan melalui perundangan subsidiari, statut percukaian mestilah mengandungi tiga bahagian undang-undang percukaian, iaitu subjek percukaian, orang bertanggungjawab membayar cukai dan kadar di mana cukai hendaklah dibayar. Walau bagaimanapun, Mahkamah Rayuan berpendapat bahawa s. 35(1) Akta senyap mengenai orang yang sepatutnya

dikenakan cukai dan sebaliknya mewakilkan kepada Menteri untuk mengenal pasti orang yang hendak dikenakan cukai dan ini seterusnya membenarkan pengenalpastian orang yang akan dikenakan cukai oleh Menteri tanpa kuasa undang-undang Persekutuan, yang dilarang oleh per. 96 Persekutuan. Mahkamah Rayuan juga mendapati perintah adalah suatu undang-undang yang menindas kerana ia mengasingkan satu kelas orang tertentu untuk dikenakan bayaran ses. Oleh itu, Mahkamah Rayuan menolak rayuan perayu-perayu tetapi membenarkan rayuan responden-responden dengan memerintahkan perayu-perayu untuk memulangkan bayaran ses yang dikumpul kepada responden-responden dengan faedah pada kadar 4%. Perayu-perayu sekarang dibenarkan untuk meneruskan rayuan. Isu-isu untuk ditentukan dalam rayuan ini adalah (i) sama ada s. 35 Akta adalah statut percukaian sahih; (ii) sama ada pengenaan ses terhadap satu kelas pihak ialah satu bentuk penindasan dan seterusnya adalah pelanggaran per. 8 Perlembagaan; dan (iii) sama ada pengumpulan ses di bawah Perintah bagi tujuan kehendak subsidi harga minyak masak termaktub dalam tujuan s. 33 Akta.

Diputuskan (membenarkan rayuan dengan kos):

(1) Alasan yang sama yang telah digunakan oleh mahkamah ini dalam *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & Anor* (kes *Premium*) telah diterima dan digunakan dalam kes ini berkenaan sama ada s. 35 Akta adalah statut pencukaian sah. Ia adalah fakta yang tidak boleh dinafikan bahawa ses dikenakan secara statutori di bawah s. 35(1) Akta adalah duti, iaitu satu bentuk cukai seperti yang ditakrifkan oleh Perlembagaan. Dalam kes *Premium*, ia adalah jelas diakui terima bahawa tiga bahagian undang-undang percukaian tidak perlu dinyatakan di dalam Akta dan boleh dibuat melalui satu perintah. Dalam kes ini, akta meluluskan perbuatan perintah yang boleh menyatakan jenis, jumlah dan kadar ses, orang atau kelas orang yang dikenakan ses dan cara ses dikumpul seterusnya memenuhi tiga bahagian undang-undang percukaian. Adalah tidak perlu bagi klasifikasi untuk selalu dilihat pada atas permukaan s. 35 Akta tersebut.

(2) Pemahaman Mahkamah Rayuan bahawa bahagian undang-undang percukaian perlu dinyatakan secara khusus dalam Akta tidak selari dengan pandangan yang diambil oleh mahkamah ini dalam kes *Premium*. Dalam kes *Premium*, adalah amat jelas bahawa spesifikasi tentang perkara berkaitan dengan autoriti dan kuasa untuk mengenakan dan mengumpul ses boleh dibuat dengan cara perundangan subsidiari, yang telah diberikan kepada eksekutif oleh undang-undang Persekutuan. Oleh itu, perintah yang dikeluarkan melalui perundangan subsidiari menurut s. 35 Akta adalah cukup komprehensif untuk meliputi bahagian undang-undang percukaian. Perenggan 2 Perintah mentafsirkan pengeluar produk kelapa sawit sebagai mereka yang mengeluarkan produk seperti

yang ditafsirkan di bawah s. 2 Akta. Ini akan meliputi kelas orang di mana ses dikenakan. Cara ses dikumpul telah dinyatakan di perenggan-perenggan 4 dan 5 dan kadar ses yang akan dikumpul telah ditentukan di bawah perenggan 3 Perintah. Oleh itu, adalah jelas bahawa Menteri telah mematuhi kesemua keperluan undang-undang di bawah s. 35 Akta dan bahawa perintah tidak bercanggah dengan per. 96 Perlembagaan.

(3) Kesamarataan dari segi undang-undang seperti yang dijamin oleh per. 8 tidak bermaksud bahawa semua undang-undang harus memberi gambaran lebih am dan universal untuk diguna pakai. Badan perundangan boleh menggubal undang-undang berkenaan dengan satu kumpulan atau kelas orang memperuntukkan bahawa klasifikasi adalah rasional, bahawa terdapat objektif yang hendak dicapai oleh Akta dan terdapat pertalian antara dasar klasifikasi dan objektif Akta. Dalam kes ini, ses hanya boleh dikenakan terhadap mereka yang memiliki estet kelapa sawit agregat 40.46 hektar atau lebih atau mereka yang mempunyai kuasa tawar-menawar yang tinggi, dan secara jelas, tidak berada dalam keadaan atau kedudukan yang sama seperti mereka yang mempunyai estet yang lebih kecil. Tujuan bayaran ses dikenakan ke atas estet persendirian adalah untuk mengurangkan masalah kewangan yang dialami oleh pengeluar dan pembungkus minyak masak yang disebabkan oleh kenaikan kos minyak mentah, menyebabkan peningkatan harga minyak masak. Oleh itu, wujud pertalian antara dasar klasifikasi dan objektif undang-undang, iaitu untuk memenuhi mereka yang memiliki pegangan kelapa sawit yang lebih besar dan mengaut keuntungan yang lebih daripada harga minyak mentah yang meningkat berbanding mereka yang tidak, iaitu untuk tujuan seperti yang ditetapkan di bawah s. 33 Akta. Oleh itu, perbezaan dalam keadaan adalah tidak pada asasnya arbitrari tetapi untuk mencapai aspek sosio-ekonomi industri kelapa sawit, dan oleh itu tidak bercanggah dengan per. 8 Perlembagaan.

(4) Dalam mempertimbangkan pentafsiran undang-undang bersesuaian bagi statut percukaian, satu yang dapat menggalakkan tujuan Akta yang diperkatakan harus diguna pakai. Kuasa Menteri dalam kes ini iaitu untuk mengenakan ses untuk tujuan memberi subsidi terhadap harga minyak masak, harus dilihat terhadap latar belakang, skim dan keadaan di mana perintah telah diisytiharkan. Dalam hal ini, adalah jelas bahawa Akta telah memberi Menteri bimbingan yang cukup dalam menggunakan budi bicaranya untuk memutuskan sama ada ses boleh dikumpul untuk memberi subsidi terhadap harga minyak masak. Ini akan memperkukuhkan lagi fakta bahawa s. 35 Akta tidak boleh dibaca secara berasingan dengan peruntukan lain Akta bagi memahami tujuan di sebalik pengenaan ses terhadap produk kelapa sawit untuk menstabilkan harga minyak masak. Selepas pemeriksaan teliti Akta secara keseluruhannya, ia menjadi jelas bahawa adalah fungsi Lembaga

untuk bukan sahaja mengawal tetapi juga menggalakkan semua aktiviti dalam industri kelapa sawit. Oleh itu, Menteri mempunyai kuasa untuk menstabilkan harga minyak masak melalui pengenaan ses.

Case(s) referred to:

Banerjee v. State of Madhya Pradesh AIR 1971 SC 511 ***(refd)***
Bromley London Borough Council v. Greater London Council [1982] 2 WLR 63 ***(refd)***
DanaHarta Urus Sdn Bhd v. Kekatong Sdn Bhd [2004] 1 CLJ 701 FC ***(refd)***
Datuk Haji Harun Idris v. PP [1976] 1 LNS 19 FC ***(refd)***
Malaysian Bar v. Government of Malaysia [1987] 2 MLJ 165 ***(refd)***
Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***
Prescott v. Birmingham Corporation [1954] 3 WLR 990 ***(refd)***
Shri Ram Krishna Dalmia v. Shri Justice SR Tendolkar & Ors AIR [1958] SC 538 ***(refd)***
WT Ramsay Ltd v. Inland Revenue Commissioners [1982] AC 300 ***(refd)***

Legislation referred to:

Criminal Procedure Code, s. 418
Federal Constitution, arts. 4, 8, 96, 97(1), 104(3), 160
Malaysian Palm Oil Board (CESS) (Oil Palm Fruit) Order 2007, paras 2, 3, 4, 5, Shcedule
Malaysian Palm Oil Board Act 1998, s. 2, 3(2)(a), (b), 4(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), 5(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), 15(1), (2), 33(d), (i), 35(1), (2), 38, 39, 77(1), (2), 78(1)(a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n)
Palm Oil Research and Development Act 1979, ss. 2, 14(1)

[For the Civil Appeal No: 01(f)-4-03-2013(W)]
For the 1st appellant - Zainur Zakaria (Helmi Hamzah, Wan Ahmad Dzaffarn Wan Kamaruddin & Nur Khairunnisa Zainal Abidin with him); M/s Hisham Sobri & Kadir

[For the Civil Appeal No: 01(f)-5-03-2013(W)
For the 2nd & 3rd appellants - Shamsul Bolhassan (Muzila Mohamed Arsad with him); SFCs
For the respondents - Cyrus V Das (T Sudhar with him); M/s Shook Lin & Bok

Reported by Vani Krishnan

JUDGMENT

Raus Sharif PCA:

Introduction

[1] These two appeals concerned the constitutionality of the Malaysian Palm Oil Board (CESS) (Oil Palm Fruit) Order 2007 (2007 Order), made by Minister of Plantation, Industries and Commodities pursuant to s. 35(1) of the Malaysian Palm Oil Board Act 1998.

[2] The High Court struck down the 2007 Order as invalid. The Court of Appeal upheld the judgment of the High Court. The 2007 Order was declared invalid by the High Court on the ground as mentioned below in this judgment (see para. 14) that the cess collected was used for purposes outside the scope of s. 33, thus rendering the 2007 Order void and illegal.

[3] The appellants (defendants) in these appeals are the Malaysian Palm Oil Board, the first appellant ("the board"), the Minister of Plantation, Industries and Commodities, the second appellant ("the Minister") and the Government of Malaysia, the third appellant ("the Government").

[4] The respondents are the oil palm owners who were subjected to the 2007 Order. They were the plaintiffs in the High Court and had instituted proceedings against the defendants to have the 2007 Order declared null and void, and an order for the refund of the cess collected from them.

[5] Leave to appeal was granted by this court to the appellants on two questions of law, namely:

(a) Whether s. 35 of the Malaysian Palm Oil Board Act 1998 which empowers the second appellant to impose cess via subsidiary legislation is *ultra vires* art. 96 of the Federal Constitution; and

(b) Whether the imposition of cess on a class of parties/individual under s. 35 of Malaysian Palm Oil Board Act 1998 and the exclusion of certain parties/individual from the same class is a form of discrimination and in breach of art. 8 of the Federal Constitution.

Background Facts

[6] The background facts of this case which led to these appeals have been well set out in the judgments of the High Court ([2011] 1 MLJ 705) and the Court of Appeal ([2013] 1 CLJ 906). We will rely on them to a large extent and set them out in the following paragraphs in so far as they are relevant to the issues which arise for determination in these appeals.

[7] Sometime in early May 2007, the Government was informed about the losses suffered by the local millers and packers of cooking oil as a consequence of a combined effect of rising prices of crude oil and the ceiling price imposed by the Ministry of Domestic, Trade and Consumer Affairs on the sale of the cooking oil to local consumers. To mitigate the losses suffered by the millers and packers of cooking oil, the Government reactivated the Cooking Oil Subsidy Scheme (COSS). A similar scheme was successfully introduced in year 1999 and 2004.

[8] In order to finance the COSS, the Minister, after consultation with the Ministry of Finance, issued the 2007 Order. It was made under s. 35 of the Malaysian Palm Oil Board Act 1998 ("the Act").

[9] The 2007 Order provided a levy and collection of cess by the Board from oil palm fruit producers who owned (a) oil palm holdings which is not less than 40.46 hectares or (b) oil palm holdings which is in aggregate amount

to not less than 40.46 hectares. These oil palm fruit producers were required to pay the Board a cess for every metric tonne of oil fruit produced at the rate specified in the Schedule to the 2007 Order when the monthly average price of crude palm oil exceeds RM1,500 per metric tonne.

[10] Under the same order, the Minister, pursuant to s. 77 of the Act, expressly exempted person or persons or classes of person from the imposition of cess. Such persons or classes of person were identified as (a) any government land scheme with settlers or individuals participant, planted with oil palm or (b) any oil palm small holding owned by individual but managed and controlled by government agencies.

[11] Thus, government related land schemes such as FELDA, FELCRA, RISDA, KESEDAR, LKPPP, SALCRA, LKTNS, Koperasi Sungai Manilan and Beliawanis were exempted from cess under the 2007 Order. The exemption from the 2007 Order was also extended to oil palm owners holding less than 40.46 hectares, the millers, refiners, packers, end-producers, end-product manufacturers, end-product retailers, suppliers and/or wholesalers.

[12] The 2007 Order was for a period from 1 July 2007 to 1 August 2008. During that period, cess was collected by the board from oil palm plantation owners like the respondents who through this suit applied to have the 2007 Order struck out and the cess collected from them to be refunded.

At The High Court

[13] Before the High Court, the respondents mounted an attack on the Act and the 2007 Order on the grounds that it violated several parts of the Federal Constitution (Constitution). The respondents claimed, *inter alia* that:

(a) the 2007 Order was *ultra vires* the Constitution as it did not provide for payment of the cess as a federal tax into the Consolidated Fund as required under art. 97(1) of the Constitution;

(b) the declared purpose of providing a subsidy for keeping down the price of cooking oil was not authorised by the federal law under art. 104(3) of the Constitution;

(c) the 2007 Order was a discriminatory tax and was *ultra vires* art. 8 of the Constitution;

(d) the 2007 Order did not reflect any consultation with the Ministry of Finance; and

(e) s. 35 of the Act and the 2007 Order were unconstitutional because of the excessive delegation of legislative powers.

[14] The trial judge decided in favour of the respondents on only one issue. The trial judge after acknowledging that Parliament had authorised the imposition of cess on terms set out under s. 35 of the Act was of the view

that the cess collected could only be used for the purpose set out under s. 33 of the Act. After examining s. 33, he opined that the use of cess to subsidize the price of cooking oil was not one of the purposes that cess collected could be utilised by the Board. For that reason alone the trial judge decided that the 2007 Order was *ultra vires* and consequently void and illegal.

[15] On the other issues raised by the respondents, the trial judge held as follows:

(a) Parliament had authorized the Minister to impose cess on terms as set out in s. 35 of the Act and the money collected for cess must be deposited into the Malaysian Oil Board Fund (Fund) to be managed by the Board and used only for the purposes set out under s. 33 of the Act. The Act was clear in terms and Parliament must have intended to allow the Minister to impose cess for the purposes of the Act. Since Parliament had legislated for the creation of the fund and provided the mechanism for its use, the argument that all tax collected by way of cess should be placed in the Consolidated Fund must be rejected. Hence, the non-payment of the cess collected in the Consolidated Fund did not violate art. 97(1) of the Constitution.

(b) the required consultation under s. 35 of the Act by the Minister with the Ministry of Finance did take place before the issuance of the 2007 Order; and

(c) the 2007 Order was not discriminatory as the Minister had explained in the Gazette notification why certain parties were exempted from the payment of cess. Further art. 8 of the Constitution is not absolute and that discriminatory law is good law if it is based on reasonable classification (*Datuk Haji Harun bin Haji Idris v. Public Prosecutor* [1977] 2 MLJ 155).

[16] The trial judge while holding that the collection of cess under the 2007 Order was void and illegal did not however order the refund of the cess collected. Instead, His Lordship was of the view that a separate application is to be made by the Respondents for that purpose.

At The Court Of Appeal

[17] Both parties appealed against the decision of the High Court. The respondents' appeal was over the failure of the High Court to order the refund of the cess paid and over the rejection of the other grounds advanced to challenge the impugned 2007 Order. The appellants' appeal was over the declaration that the 2007 Order was *ultra vires* the Act and thus invalid.

[18] The Court of Appeal held that the trial judge was correct in holding the collected cess was used for purposes outside the scope of s. 33 (2) of the Act and thus the 2007 Order was *ultra vires* the Act and consequently was void and illegal. It further held that the 2007 Order was void and illegal for the following reasons:

A (a) the cess collected through the 2007 Order would only be applied for the expressly listed purposes in s. 33(1) of the Act. In the instant case, even after giving the listed purposes an interpretation having regard to the objectives of the Act, the court was unable to confer a meaning on the listed purposes which could render valid the subsidising of the price of
B cooking oil;

(b) s. 35 of the Act did not authorise the collection of cess for the purpose of subsidising the price of cooking oil. In the absence of any provision in s. 35(1) of the Act authorising the collection of cess for the purpose of subsidising the price of cooking oil, for the Minister to impose such
C tax would for all intents and purposes amount to the imposition of cess by executive order.

(c) s. 35(1) of the Act is silent on the person who is to be charged with tax. The said section delegates the identity of the person to be subject to tax to the Minister who by order is to specify "the person or class of persons
D on whom the cess is imposed". Such delegation effectively amounts to the identification of a person or class of person without the authority of federal law, which is prohibited by art. 96 of the Constitution. Since the 2007 Order infringes two of the three components of tax law, it follows that the said Order is *ultra vires* art. 96 of the Constitution;

E (d) s. 35(1) of the Act does not contain any basis or guidelines to assist the Minister and the Government in the matter of selection or classification of the persons to be subjected to the payment of cess. The power conferred on the Minister to determine the persons to be subject to tax are so wide and without any policy guidelines so as to render the
F delegation arbitrary and uncontrollable. In the instant case, the fruit producers were the only category of persons targeted against others, similarly situated without a reasonable basis for their selection. The singling out of the fruit producers only for the imposition of the cess was arbitrary and discriminatory. Thus, the 2007 Order was a piece of
G discriminatory law; and

(e) in the absence of any principles or policy for guiding the exercise of discretion by the Minister and the Government under the Act, the court was not required to examine the basis contained in the affidavit affirmed by the Minister upon which the discretion was said to be exercised.

H **[19]** Having found the above, the Court of Appeal dismissed the appellants' appeal. At the same time, the respondents' appeal was allowed, and the appellants were ordered to refund the respondents the cess collected with interest at the rate of 4%.

I **At The Federal Court**

[20] As stated earlier, leave to appeal was granted by this court on two questions of law. We will first deal with the first question which reads:

Whether s. 35 of the Malaysian Palm Oil Board Act 1998 which empowers the 2nd Appellant to impose cess *via* subsidiary legislation is *ultra vires* art. 96 of the Federal Constitution.

[21] For a better understanding of the issues involved, s. 35 of the Act and art. 96 of the Constitution are reproduced below:

Cess on oil palm product

35 (1) The Minister may, after consultation with the Minister of Finance, make orders for the imposition, variation or cancellation of a cess on oil palm products produced in or exported from Malaysia and the orders may specify the nature, amount and rate of the cess, *person or class of persons on whom the cess is imposed and the manner of collection of the cess.

(2) Except in so far as may be otherwise provided in any order made under subsection (1), the cess imposed by such order shall, for the purposes of its collection and for the enforcement of the collection thereof, be deemed to be a customs duty under the Customs Act 1967 [Act 235].

(3) An order made under this section may prescribe different amounts, rates and manner of collection for different types or grades of oil palm product in relation to different persons or different classes of persons.

(4) A person who fails or refuses to pay any cess imposed under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten times the amount of cess due or to imprisonment for a term not exceeding three years or to both.

(5) The amount of any cess imposed under this section shall be a debt due to the Board from the person on whom the cess is imposed and may be sued for and recovered in any court at the suit of the Board.

(6) The institution of proceedings under this section shall not relieve any person from liability for the payment of any cess for which he is or may be liable or from liability to make any return which he is required by this Act to make.

(7) Without prejudice to subsection (5), the court before which a person is convicted for an offence under subsection (4) may order the person to pay to the Board the total amount of cess certified by the finance officer of the Board to be due from the person at the date of the conviction.

(8) Cess payable under subsection (7) shall, for the purpose of its collection, be deemed to be a fine and shall be recovered in accordance with section 283 of the Criminal Procedure Code [Act 593].

No taxation unless authorized by law

96. No tax or rate shall be levied by or for the purposes of the Federation except by or under the authority of federal law.

[22] It is clear from the above that by virtue of art. 96 of the Constitution no tax can be imposed except by or under the authority of a federal law. The issue now is whether s. 35 of the Act, a federal law which provides for the imposition of cess offends art. 96 of the Constitution. In short, we are to determine whether s. 35 of the Act is a valid taxing statute.

[23] As stated earlier, the Court of Appeal in finding that s. 35 (1) of the Act offended art. 96 of the Constitution held *inter alia* that:

(a) the 2007 Order was issued by way of subsidiary legislation pursuant to s. 35 of the Act. Although there cannot be tax by an executive order, tax can be imposed by subsidiary legislation provided the statute under which it is made specifically authorises the imposition. A taxation statute, whether by way of principal or subsidiary legislation must have three components of tax law ie, subject of the tax, the person liable to pay the tax and the rate which the tax is to be paid; and

(b) s. 35(1) of the Act is silent on the person who is to be charged with tax. The said section delegates the identity of the person to be subject to tax to the Minister who by order is to specify "the person or class of persons on whom the cess is imposed". Such delegation effectively amounts to the identification of person or class of person without the authority of federal law, which is prohibited by art. 96 of the Constitution. Since the 2007 Order infringes two of the three components of tax law, it follows that the said Order is *ultra vires* art. 96 of the Constitution.

[24] Learned counsel for the appellants submitted that the above findings of the Court of Appeal were contrary to the earlier decision of this court in *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn. Bhd.* [2005] 3 MLJ 97; [2004] 2 CLJ 265 (*Premium*'s case), an authority directly in point to the circumstances of these appeals. It was pointed out that this court in *Premium*'s case had dealt with the validity of a similar Cess Order issued by the Minister concerned, pursuant to the then equivalent s. 14(1) of the Palm Oil Research and Development Act 1979 (the 1979 Act).

[25] In *Premium*'s case, one of the arguments advanced was that there was nothing in s. 14(1) of the 1979 Act which can be construed as empowering the Minister to impose cess on palm oil millers. Thus, it is important that we examine *Premium*'s case in greater detail in regard to the approach undertaken by this court in dealing with s. 14(1) of the1979 Act which was a precursor to s. 35(1) of the Act.

[26] The facts of *Premium*'s case are these: The appellant was the Palm Oil Research and Development Board. The respondent was a company engaged in the extraction of crude palm oil ('CPO') from the whole palm fruits and crude palm kernel oil ('CPKO') from the kernel of oil palm fruits. By virtue of the Palm Oil (Research Cess) Order 1979 ('the 1979 Order') made under the authority of the Palm Oil Research and Development Act 1979 ('the

1979 Act'), palm oil millers were required to pay cess for every metric ton of crude oil. The respondent did not dispute the imposition of cess on CPO but contended that the cess on CPKO was invalid. It took out an action in the High Court for a declaration that the appellant was not empowered to impose cess on CPKO and therefore sought a refund of the monies paid. The High Court found in favour of the appellant. On appeal by the respondent, the Court of Appeal reversed the High Court's decision. This Court then granted the appellant leave on the following questions: (1) Whether the Palm Oil Research and Development Act 1979, is a taxing statute; (2) If the answer is in the affirmative, then what interpretation/approach should be taken.

[27] The main issue in *Premium*'s case was whether or not the 1979 Order which provided for the levying and collection of cess by the appellant from palm oil millers in respect of both CPO and CPKO, was *ultra vires* the parent statute, ie, the 1979 Act. Three instances of *ultra vires* were raised by counsel for the respondent: (1) the absence of any authority in the 1979 Act, in particular, ss. 2 and 14 thereof to collect cess from palm oil millers; (2) the levying of cess on CPKO was in itself *ultra vires* ss. 2 and 14 of the 1979 Act because the definition of 'palm oil' in s. 2 does not include 'kernel'; and (3) the 1979 Order was an unauthorised enlargement of ss. 2 and 14 of the 1979 Act through the use of the expression 'and/or' in para. 2 which purported to define a 'palm oil miller'.

[28] This court held that s. 14(1) of the 1979 Act to be a valid taxing statute. In addition, it also held that the specification concerning the persons to be taxed, the amount, and the manner of the collection of the tax by the Minister concerned in the said 1979 Order was valid.

[29] We adopt and apply the same reasoning in *Premium*'s case to the present case concerning whether s. 35 of the Act is a valid taxing statute. In the present case, it is clear that Parliament has authorised the Minister to impose cess on the terms as set out in s. 35 and the sum collected for cess must be deposited into the fund to be managed by the Board and used only for the purposes set out in s. 33 of the Act. We have no doubt that the cess collected under s. 35(1) is a form of tax. This is because s. 35(2) expressly states that the cess imposed be deemed to be customs duty under the Customs Act 1967. Art. 160 of the Constitution defines tax to include import or a duty but does not include a rate levied for local purposes or a fee for services rendered. Therefore, it cannot be denied that the cess statutorily imposed under s. 35(1) of the Act is a duty which is a form of tax as defined by the Constitution.

[30] We now revert to the finding of the Court of Appeal in that the tax law components have not been fulfilled in this case. In this regard, the Court of Appeal found that s. 35(1) is equally silent on the person who is to be charged with tax and instead delegates the identity of the person to be subject to tax to the relevant Minister who by order is to specify "the person or class

of persons on whom the cess is imposed". By this reason the Court of Appeal was of the considered view that the delegation of the selection of the persons to be charged with tax to the Minister effectively amounts to the identification of the person to be charged with tax to the Minister without the "authority of federal law", which is prohibited by art. 96 of the Constitution. The relevant part of the Court of Appeal's judgment on this point merits reproduction as shown below:

> [23] … it is significant that s. 35(1) is equally silent on the person who is to be charged with tax. As submitted by counsel for the appellants, s. 35(1) instead delegates the identity of the person to be subject to tax to the relevant Minister who by order is to specify "the person or class of persons on whom the cess is imposed". We agree with counsel for the appellants that the delegation of the selection of the persons to be charged with tax to the 2nd respondent effectively amounts to the identification of the person to be charged with tax to the 2nd respondent without the "authority of federal law", which is prohibited by art. 96 of the Federal Constitution. In this respect, we adopt the pronouncements of Lord Simonds in *Russell v. Scott* [1948] 2 All ER 1 at 5:
>
> > My Lords, there is a maxim of income tax law which, though it may sometimes be over-stressed, yet ought not to be forgotten. It is that the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax on him. It is necessary that this maxim should on occasion be re-asserted and this is such an occasion.
>
> Admittedly, Lord Simon's observation was made in relation to income tax, however, we see no reason why it should not apply with equal force to other forms of tax such as the cess imposed by the Cess Order 2007. Since the Cess Order 2007 infringes two of the three components of tax law, it follows that the Cess Order 2007 is *ultra vires* art. 96 of the Federal Constitution.

[31] With respect we find that the understanding of the Court of Appeal that the components of tax law must be specifically stated in the Act does not accord with the view taken by the Federal Court in *Premium*'s case. As stated earlier it is pertinent to note that the appellant in Premium's case raised similar arguments with regard to the absence of the tax law components under s. 14(1) of the 1979 Act. But Steve Shim CJ (Sabah and Sarawak) after examining s. 14(1) of the 1979 Act said that when the words "the order may specify the nature, the amount or rate and the manner of collection of the cess' were examined in their proper context *vis-à-vis* the provisions reflected in the 1979 Order, there can be no doubt that the Minister, in effecting the said 1979 Order, had complied with s. 14(1) of the 1979 Act as regards to the imposition of cess. Steve Shim CJ (Sabah and Sarawak) analysed the wordings that appeared in s. 14 of the 1979 Act as follows:

20 Here, counsel for the respondent argues that nothing in those sections can be construed as empowering the Minister to impose research cess on palm oil millers. *In my view, it is significant to take a closer look at s. 14(1) in particular the words 'and the orders may specify the nature, the amount and rate and the manner of collection of the cess'. The words are sufficiently clear. There are three parts involved, namely, the nature of the cess, the amount and rate of the cess and the manner of collection of the cess. As regards the nature of the cess, this must relate to the research cess to be imposed on a person who carries on the business of extracting oil from oil palm fruits and/or seeds. And such a person is defined as a palm oil miller. Thus, the nature of the cess to be imposed is clearly reflected in paras 1 and 2 of the 1979 Order which stipulate:*

> *(1) This Order may be cited as the Palm Oil (Research Cess) Order 1979 and shall come into force on the 1 January 1980.*
>
> *(2) In this Order 'palm oil miller' means a person who carries on the business of extracting oil from oil palm fruits and/or seeds.*

21 As regards the amount and rate of the cess to be imposed, this is reflected in para 3 of the 1979 Order which states:

> *3 Every palm oil miller shall pay a cess of four ringgit for every metric ton or part of a metric ton of crude palm oil produced by him.*

22 On the manner of collection of the said cess, paras 4 and 5 of the 1979 Order provide as follows:

> *(4) Every palm oil miller shall pay cess to the Palm Oil Research & Development Board not later than the 35th day of each quarter of a calendar year for crude palm oil produced by him during the preceding quarter.*
>
> *(5) Every palm oil miller shall submit to the Board not later than the seventh day of each month a true return in the appropriate form as prescribed by the Board showing the amount of crude palm oil produced by him during the preceding month.*

23 Thus, when the words 'the orders may specify the nature, the amount or rate and the manner of collection of the cess' are examined in their proper context vis-a-vis the provisions reflected in the 1979 Order, there can be no doubt that the Minister, in effecting the said 1979 Order, has complied with s. 14(1) of the 1979 Act as regards the imposition of cess on CPO. The position in respect of cess on CPKO is quite different. I shall deal with this later.

24. Another significant point of focus is the words 'manner of collection of the cess' in s. 14(1). This phrase must necessarily relate to the process involved in the collection of cess. This means the methods to be employed in collecting the cess. Clearly, the methods would entail the essential elements of how, by whom and from whom the cess is to be collected. To construe otherwise would give rise to an absurdity. These essential elements are fully reflected in the provisions of the 1979 Order. In the circumstances, I am unable to accept respondent counsel's contention that s. 14(1) read with s. 2 of the 1979 Act does not empower the Minister to impose cess on palm oil millers in respect of CPO. That proposition has no merit whatsoever. I therefore reject it accordingly.

(emphasis added)

[32] As can be inferred from the above paragraphs of the judgment of this court in *Premium*'s case, the specification of the matters concerning the identity of the cess payer, the amount to be paid, the manner of collection can be made vide subsidiary legislation. This court had explicitly acknowledged that the three components of tax law need not be specified in the Act and can be made by way of an order. This court after referring to s. 14 of the 1979 Act in particular the words 'and the orders may specify the nature, the amount and rate and the manner of collection of the cess' held that all the required particulars had been identified and specified under the 1979 Cess Order.

[33] In the present case, similar words were used in s. 35(1) of the Act as was used in s. 14(1) of the 1979 Act. In our judgment the wordings *"orders may specify the nature, amount and rate of the cess, person or class of persons on whom the cess is imposed and the manner of collection"* should be interpreted the same way as was done in *Premium*'s case.

[34] Thus, it is our finding that the Act had authorised the making of an order (in this case the 2007 Order) that may specify the nature, amount and rate of the cess, person or class of persons on whom the cess is imposed and the manner of collection of the cess thus fulfilling the three components of tax laws. It is not necessary that the classification must always appear on the face of the s. 35 of the Act itself. (see case of *Shri Krishna Dalmia & Ors v. Shri Justice SR Tendolkar & Ors* AIR [1958] SC 538).

[35] This court had made it abundantly clear in *Premium*'s case that the specification of those matters pertaining to the authority and power to impose and collect cess can be made by way of subsidiary legislation which had been delegated to the executive by federal law. That being said, the 2007 Order which was issued by way of subsidiary legislation pursuant to s. 35 of the Act is comprehensive enough to cover the tax law components. Paragraph 2 of the 2007 Order defines the producers of oil palm product are those who produce the "products" defined under s. 2 of the Act. This would cover the class of persons on whom the cess is imposed. The manner of collection of cess is reflected in paras. 4 and 5 and the rate of cess to be collected is specified under para. 3 of the 2007 Order.

[36] In conclusion, based on the above reasons, it is clear that the Minister had complied with all of the legal requirements imposed by s. 35 of the Act and the 2007 Order made thereunder is found to be infallible and does not contravene art. 96 of the Constitution. As stated earlier, s. 35(2) of the Act expressly stated that the cess imposed be deemed to be a customs duty. Therefore, we cannot deny that the cess statutorily imposed under s. 35(1) of the Act is a duty, which is a form of tax as defined under the Constitution.

[37] In these circumstances, it is our finding that s. 35 of the Act which empowers the 2nd Appellant to impose cess *via* subsidiary legislation is not *ultra vires* art. 96 of the Constitution. We shall accordingly answer the first question of law posed in this appeal in the negative.

[38] We now turn to the second question of law posed in these appeals which read as follows: A

> Whether the imposition of cess on a class of parties/individual under s. 35 of Malaysian Palm Oil Board Act 1998 and the exclusion of certain parties/individual from the same class is a form of discrimination and in breach of art. 8 of the Federal Constitution. B

[39] The respondents in the present appeal alluded that the 2007 Order was a discriminatory tax law given the overwhelming evidence that the 2007 Order singled out only one category of persons to be subjected to tax out of others in a class similarly circumstanced. Further, the respondents argued that s. 35(1) does not contain any basis or guidelines to assist the Minister C and the Government in the matter of selection or classification of the persons to be subject to the payment of the cess.

[40] As stated earlier the Court of Appeal had accepted the respondents' contention and ruled that the singling out of the fruit producers only for the D imposition of the cess was arbitrary and discriminatory and held that the 2007 Order was a piece of discriminatory law. The Court of Appeal was fortified in coming to this conclusion based on the fact that the powers conferred on the Minister without any policy guidelines in the Act, to determine the persons to be subject to tax are so wide yet, so as to render the delegation to be arbitrary and uncontrollable. E

[41] In deciding it as it did the Court of Appeal referred to the decision of this court in the case of *DanaHarta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 2 MLJ 257; [2004] 1 CLJ 701 which made reference to the test of reasonable classification propounded by the Indian Supreme Court in *Shri Ram Krishna Dalmia & Ors v. Shri Justice Tendolkar SR & Ors (supra)*. This test divided into F five categories was said to be:

> (a) A statute may itself indicate the persons or things to whom its provisions are intended to apply and the basis of the classification of such persons or thing may appear on the face of the statute or may be gathered from the surrounding circumstances known to or brought to the notice of G the court. In determining the validity or otherwise of such a statute, the court has to examine whether such classification is or can be reasonably regarded as based upon some differentia which distinguishes such persons or things grouped together from those left out of the group and whether such differentia has a reasonable relation to the object sought to be H achieved by the statute, no matter whether the provisions of the statue are intended to apply only to a particular person or thing or only to a certain class of persons or things. Where the court finds that the classification satisfies the tests, the court will uphold the validity of the law, as it did in *Charanjit Lal v. Union of India* AIR 1951 SC 41, State of Bombay FN Balsra AIR 1951 SC 318, *Kedar Nath Bajoria v. State of West* I *Bengal* AIR 1953 SC 404, *VM Syed Mohammad & Company v. State of Andhra* AIR 1954 SC 314 and *Budhan Choudhry v. State of Bihar* AIR 1955 SC 191;

A (b) A statute may direct its provisions against one individual person or thing or to several individual persons or things but no reasonable basis of classification may appear on the face of it or be deducible from the surrounding circumstances, or matters of common knowledge. In such a case, the court will strike down the law as an instance of naked discrimination, as it did in *Ameerunnissa Begum v. Mahbobo Begum* AIR 1953 B SC 91 and *Ramprasad Narain Sahi v. State of Bihar* AIR 1963 SC 215;

(c) A statute may not make any classification of the persons or things for the purpose of applying its provisions but may leave it to the discretion of the government to select and classify persons or things to whom its provisions are to apply. In determining the question of the validity or C otherwise of such a statute, the court will not strike down the law out of hand only because no classification appears on its face or because a discretion is given to the government to make the selection or classification but will go on to examine and ascertain if the statute has laid down any principle or policy for the guidance of the exercise of discretion by the government in the matter of the selection or D classification. After such scrutiny, the court will strike down the statute if it does not lay down any principle or policy for guiding the exercise of discretion by the government in the matter of selection or classification, on the ground that the statue provides for the delegation of arbitrary and uncontrolled power to the government so as to enable it to discriminate between persons or things similarly situate and that, therefore, the E discrimination is inherent in the statute itself. In such a case, the court will strike down both the law as well as the executive action taken under such law, as it did in *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75, *Dwarka Prasad v. State of Uttar Pradesh* AIR 1954 SC 224 and *Dhirendra Kumar Mandal v. Superintendent and Remembrancer of Legal Affairs* 1954 AIR 424; 1955 SCR 224;

F (d) A statute may not make a classification of the persons or things for the purpose of applying its provisions and may leave it to the discretion of the government to select and classify the persons or things to whom its provisions are to apply but may at the same time lay down a policy or principle for the guidance of the exercise of discretion by the government G in the matter of such selection or classification; the court will uphold the law as constitutional, as in *Kathi Raning Rawat v. The State of Saurashtra* AIR 1952 SC 123;

(e) A statute may not make a classification of the persons or things to whom their provisions are intended to apply and leave it to the discretion H of the government to select or classify the persons or things for applying those provisions according to the policy or the principle laid down by the statute itself for guidance of the exercise of discretion by the government in the matter of such selection or classification. If the government in making the selection or classification does not proceed on or follow such policy or principle, it has been held in *Kathi Raning Rawat v. The State of* I *Saurashtra* AIR 1952 SC 123 that in such a case of the executive action but not the statute should be condemned as unconstitutional.

[42] The Court of Appeal relied on categories (c) and (e) as postulated in the case of Shri Ram Krishna Dalmia in coming to its conclusion that the 2007 Order is a piece of discriminatory law and that s. 77 of the Act is *ultra vires* art. 8 of the Constitution.

[43] It is given that art. 8 of the Constitution guarantees that all persons are equal before the law and entitled for equal protection of the law. The jurisprudence relating to art. 8 of the Constitution has been aptly discussed and summarised in the case of *Datuk Haji Harun bin Idris v. PP* [1977] 2 MLJ 155. In that case one of the issues raised was that s. 418 of the Criminal Procedure Code (under the provisions of which the case was transferred from the subordinate court to the High Court for trial) was inconsistent with art. 8 of the Constitution and therefore void by virtue of art. 4. Suffian LP, in dealing with the issue, had laid down the principles of equality in the Malaysian context in this way:

> 1. The equality provision is not absolute. It does not mean that all laws must apply uniformly to all persons in all circumstances everywhere.
>
> 2. The equality provision is qualified. Specifically, discrimination is permitted within clause (5) of Article 8 and Article 153.
>
> 3. The prohibition of unequal treatment applies not only to the legislature but also to the executive – this is seen from the use of the words 'public authority' in clause (4) and 'practice' in clause (5)(b) of Article 8.
>
> 4. The prohibition applies to both substantive and procedural law.
>
> 5. Article 8 itself envisages that there may be lawful discrimination based on classification – thus Muslims as opposed to non-Muslims (para (b) of clause (5) of Article 8); aborigines as opposed to others (para (c)); residents in a particular State as opposed to residents elsewhere (para (d)); and Malays and natives of Borneo as opposed to others who are not (Article 153).
>
> 6. ... the first question we should ask is, is the law discriminatory, and that the answer should then be - if the law is not discriminatory, if for instance it obviously applies to everybody, it is good law, but if it is discriminatory, then because the prohibition of unequal treatment is not absolute but is either expressly allowed by the Constitution or is allowed by judicial interpretation we have to ask the further question, is it allowed? If it is, the law is good, and if it is not, the law is void.
>
> 7. ... discriminatory law is good law if it's based on 'reasonable' or 'permissible' classification, using the words used in the passage reproduced the judgement in *Shri Ram Krishna Dalmia & Ors v. Shri Justice SR Tendolkar & Ors* AIR 1958 SC 538, provided that:
>
> > (i) The classification if founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group; and
> >
> > (ii) The differentia has a rational relation to the object sought to be achieved by the law in question. The classification may be founded on different bases such as geographical, or according to

A objects or occupations and the like. What is necessary is that there must be a nexus between the basis of classification and the object of the law in question.

8. Where there are two procedures existing side by side, the one that is more drastic and prejudicial is unconstitutional if there is in the law no B guideline as to the class of cases in which either procedure is to be resorted to. But it is constitutional if the law contains provisions for appeal, so that a decision under it may be reviewed by a higher authority. The guideline may be found in the law itself; or it may be inferred from the objects and reasons of the bill, the preamble and surrounding circumstances, as well as from the provisions of the law itself. The fact C that the executive may choose either procedure does not in itself affect the validity of the law ...

9. In considering Article 8 there is a presumption that an impugned law is constitutional, a presumption stemming from the wide power of classification which the legislature must have in making laws operating D differently as regards different groups of persons to give effect to its policy.

10. Mere minor differences between two procedures are not enough to invoke the inhibition of the equality clause.

[44] The jurisprudence relating to art. 8 of the Constitution was further E propounded in the case of *Malaysian Bar v. Government of Malaysia* [1987] 2 MLJ 165. There, Salleh Abas LP in his dissenting judgment stated as follows at pp. 166-167:

The requirement for equal protection of the law does not mean that all laws passed by a legislature must apply universally to all persons and that F the law so passed cannot create differences as to the persons to whom they apply and the territorial limits within which they are in force. Individuals in any society differ in many respects such as, *inter alia*, age, ability, education, height, size, colour, wealth, occupation, race and religion. Any law made by a legislature must of necessity involve the making of a choice and differences as regards its application in terms of G persons, time and territory. Since the legislature can create differences, the question is whether these differences are constitutional. The answer is this: if the basis of the difference has a reasonable connection with the object of the impugned legislation, the difference and therefore the law which contains such provision is constitutional and valid. If on the other hand there is no such relationship the difference is stigmatised as H discriminatory and the impugned legislation is therefore unconstitutional and invalid. This is known as the doctrine of classification which has been judicially accepted as an integral part of the equal protection clause. Its classic rendering is well summarized in *Lindsley v. National Carbonic Gas Co* [1911] 220 US 61, pp 76-79, 55 L Ed 369 [this case should be cited as *Lindsley v. Natural Carbonic Gas Co*), in the following terms: I

1 The equal protection clause of the 14th amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in

> that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary.
>
> 2 A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3 When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4 One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.

[45] We respectfully share the views stated above. Thus, we find that the Court of Appeal had misconstrued the respondents' complaint in addressing this point that the singling out of the fruit producers only for the imposition of the cess was arbitrary and discriminatory. To this extent, we had to consider whether the classification was reasonable or permissible. Having deliberated on this issue, our conclusion is that the 2007 Order is not discriminatory. We are of the view that equality before the law guaranteed by art. 8 does not mean that all laws must be general in character and universal in application. The legislature may make laws in respect of a group or a class of persons provided that the grouping or classification is rational; founded on an intelligible differentia which distinguishes persons that are grouped together from others that are left out of the group; there must be a policy or object sought to be achieved by that Act and there must be a nexus between the basis of classification and the object of the Act.

[46] That being the position, we could not see the basis of the respondents' contention that the singling out of the fruit producers only for the imposition of the cess was arbitrary and discriminatory. In our judgment those oil palm fruit producers who own holdings more than 40.46 hectares are definitely not in the same standing with those who owned less than 40.46 hectares. To put it simply, discrimination would only arise if there is a classification amongst owners holding more than 40.46 hectares of palm oil that is distinguishing some and favouring one over another. The decision to impose the cess on the private estates cannot be said to be unreasonable and discriminatory. Surely policy consideration would reflect that private estates would have higher bargaining power than smaller ones *vis-à-vis* the private estate run at a larger scale would have a higher bargaining power than the smaller estate owned by public institutions.

[47] In this regard, we also find that the Court of Appeal had missed an important point in that it would have been otherwise had the cess been imposed only on the respondents and not other private estates. This was certainly not the case here. Further we agree with the appellants in that it

cannot be said that it was not imposed on others (in the same category as the respondents) who are similarly circumstanced, such as the producers and packers, because in reality they are not similarly circumstanced. We say this because the producers and the packers are the ones who are facing the financial difficulties, not the growers like the respondents.

[48] The purpose of imposing cess on the private estates was to alleviate the financial problems faced by the producers and packers of cooking oil by reason of the increase in the cost of crude price oil, resulting in the increase of the price of cooking oil. The cess collected was to be utilised to compensate the losses incurred by the producers and packers of cooking oil for the months of January to May 2008 by reason of the said increase in the price of crude price oil and to stabilise the price of cooking oil.

[49] Thus, we agree with the submission of the appellants on this point that it was for this reason that the Minister and the Minister of Finance acting under the authority given by s. 35(1) of the Act and in the exercise of their discretion, decided to issue the 2007 Order to stabilise the price of cooking oil by way of subsidy through the imposition of the cess on the private estates. To say that the exercise of the discretion by the Minister to impose the cess only on the private estates is unreasonable and arbitrary is akin to ignoring the background of the objective, policy and functions of the Board and the situation warranting the imposition of the cess.

[50] We therefore analyse the present appeal in the following manner:

(i) Classification

Classification distinguishes persons that are grouped together from others left out of the group. In this instant, it is between those owning more than 40.46 hectares, including owning estates of an aggregate of 40.46 hectares and more, and those who owned less than 40.46 hectares which include small holders or individuals which we view could not be grouped or considered to be the same classification as those who owned estates of more than 40.46 hectares, as they are clearly not similarly situated.

For the purpose of the oil palm industry, it is stating the obvious that they both do not have equal bargaining powers in relation to the different portion of stakes they have in the industry and may not have the same responsibilities, nor expectations and do not enjoy the same benefits. Therefore if the cess imposition is "applied uniformly to all persons in all circumstances everywhere" in the oil palm industry, it would be an absurd policy that would produce unjust results and does not promote the objectives of the Act.

(ii) Rationale

The formulation dictated that the differentia is founded on different basis such as geographical, or according to objects or occupations and the like. The wordings for instance "geographical", "objects" "occupations" of

founded basis are just some of the examples where the different basis can be founded. Therefore the classification which distinguishes persons by grouping those who are fruit producers that owned oil palm estates of 40.46 hectares and more, has the rational for the imposition of cess where the bigger the oil palm holding is, they had bigger benefits reaped from the increased price of crude palm oil.

(iii) Nexus between the basis of classification and the object of the law

We observed that there exists a nexus between the basis of classification and the object of the law. Hence the nexus between the basis of classification and the object of the law is to cater for those who owned a bigger oil palm holding and make more profit from the high crude palm oil price than those who do not, which is for the purpose as stipulated under s. 33 of the Act.

We are of the view that the oil palm fruit producers who own more than 40.46 hectares of palm holdings could not be similarly situated with those who do not own such palm holdings or who owned less than 40.46 hectares. The differentia in the imposition of the cess is qualified and the rationale is linked to the object of the law that is to carry out the objective and purpose in the Act in promoting and developing the oil palm industry including promoting the efficient marketing and maintain markets for oil palm product that is palm oil. This is expressly provided for as stipulated in s. 3(2) and s. 4 of the Act.

[51] On the basis of the aforesaid analysis we hold that the dissimilarity in these circumstances is not essentially arbitrary but to achieve the socio-economic aspects of the oil palm industry, and thus is not a violation of art. 8 of the Constitution.

[52] Now, the respondents' other complaint was that cess was imposed only on private estates and not on government linked estates, exempted under s. 77, and others involved in the production of oil palm products. The appellants' refuted this contention based on the documentary evidence adduced by them pursuant to the appellants' application to adduce fresh evidence. The appellants' endeavoured to highlight that the government-linked estates did pay the cess, with only the smallholdings being exempted.

[53] We are inclined to agree with the appellants' contention on this point. The documentary evidence adduced *vide* the appellants' application to adduce fresh evidence clearly show that estates owned by agencies linked to government such as FELCRA, FELDA, RISDA, SELCRA, TABUNG HAJI, KESEDAR did pay the cess. At this juncture it is sufficient for our present purpose to state that the facts disclosed in the documentary evidence accord sufficient support to the fact that the exemption was only given to holdings owned by smallholders or smallholdings managed by these agencies.

[54] As for the respondents' second complaint ie, s. 35(1) does not contain any basis or guidelines to assist the Board and the Minister in the matter of selection or classification of the persons to be subject to the payment of the cess, we are of the considered view that the guidelines for the exercise of the discretion by the Minister in making the Cess Order pursuant to s. 35(1) of the Act can be ascertained from the objective, policy and functions of the Board. The policy guidelines for the exercise of the discretion by the Minister under s. 35(1) of the Act when he issued the 2007 Order can be easily ascertained when one scrutinises s. 3(2)(a), (b) and s. 4(a) and (b).

[55] *Section 3(2)(a) clearly lays down that the objectives of the Board are to promote and develop the oil palm industry of Malaysia; and s. 3(2)(b) to develop national objectives, policies and priorities for the orderly development and administration of the oil palm industry of Malaysia.*

This is further fortified by the functions of the Board as stated in s. 4(a) ie, to implement policies and developmental programmes to ensure the viability of the oil palm industry of Malaysia and s. 4(q) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions. (emphasis added)

[56] The broad objectives of the Board as stated in s. 3(2)(a) and (b) and the stated functions under s. 4(a) and (q), all envisages the role and function of the Board in ensuring the viability and sustainability of the oil palm industry in Malaysia.

[57] The basis of classification of the party who is liable to pay the cess had been clearly explained in the 2007 Order. In this regard we find that the classification made was in accord with the objectives, role and function of the Board as prescribed in the Act and was not unguided or uncontrolled as found by the Court of Appeal. In our judgment we find that there is a basis for the classification which is founded on an intelligible differentia which has a reasonable relation to the object sought to be achieved by it, for a definite matter of public importance ie, the collection of cess was nothing more but to finance the subsidy on 60,000 tons of cooking oil per month, to enable the ceiling price on the sale of cooking oil to local consumers to be maintained without adversely impacting the millers and packers.

[58] Our careful perusal concludes that the 2007 Order does not offend art. 8 of the Constitution. Having ruled so, we would answer the second question of law posed in these appeals in the negative.

[59] Having decided on the two questions of law posed to us, we were also called upon to rule on the finding of the High Court which was affirmed by the Court of Appeal on the issue that the cess collected could not be used to subsidise the price of cooking oil. As stated earlier, after acknowledging that Parliament had authorised the imposition of cess on terms set out under s. 35 of the Act, the High Court held that the cess collected could only be

used for the purpose set out under s. 33 of the Act. After examining s. 33, the learned trial judge opined that the use of cess to subsidize the price of cooking oil was not one of the purposes that cess collected could be utilised by the Board. Learned counsel for the respondents submitted that the trial judge as well as the Court of Appeal were right in declaring that subsidising the price of cooking oil was not one of the purposes that monies from the Fund managed by the Board pursuant to s. 33 of the Act could be used. The Respondents' position is that, there were no provisions that enable the Board to expend the Fund outside the scope of s. 33 of the Act. To this end learned counsel had placed reliance on the case of *Bromley London Borough Council* [1982] 2 WLR 63 and *Prescott v. Birmingham Corporation* [1954] 3 WLR 990 in support of their argument. Reference was also made to the cases of *Banerjee v. State of Madhya Pradesh* AIR 1971 SC 511 and *Ramsay Ltd v. Inland Revenue Commission* [1982] AC 300. These cases were also relied upon by the Court of Appeal in concluding that there must be statutory authorisation for the collection and utilisation of the cess for subsidising the price of cooking oil.

[60] The Court of Appeal in relying on the decisions in *Banerjee* and *Ramsay* held at para. 20 of the grounds of judgment that:

> the cess collected can only be applied for the expressly listed purposes in Section 33(1) of the Act. In our judgment, even after giving the listed purposes an interpretation having regard to the objectives of the Act, we are unable to confer a meaning on the listed purposes which would render valid the subsidizing the price of cooking oil."

[61] With respect, we find that the Court of Appeal had misdirected itself in coming to the above finding. In this respect, we share the view of Lord Wilberforce in *WT Ramsay Ltd v. Inland Revenue Commission (supra)*, in that courts in construing the expressly listed purposes is not confined to undertaking a literal interpretation of the words therein but permitted to construe the listed purposes in the context and scheme of the relevant Act as a whole. In our judgment we find that the Court of Appeal in giving s. 33(2)(d) a narrow and restricted interpretation had failed to appreciate the extent of the objective and purpose of the Act and the role and function of the Board in the context of the wider interest and impact in the palm oil industry in Malaysia.

[62] We are of the view that in construing a taxing statute, the function of the court is to discover the true intention of the Parliament. In that process, the court is under a duty to adopt an approach that produces neither injustice nor absurdity. In other words an approach that promotes the purpose or object underlying the particular statute albeit that such purpose or object is not expressly set out therein. This sentiment was echoed by this court in *Premium*'s case. Steve Shim CJ Sabah & Sarawak had this to say:

> Undoubtedly, in the United Kingdom, there is currently a more pronounced shift from the strict literal interpretation of taxing statute. The Ramsay Principle of statutory interpretation seems to have entrenched itself. In Malaysia, that Principle should apply and it must be applied in

A consonance with Section 17A of the Interpretation Acts 1948/1967 ... It is pertinent to note that section 17A was a recent amendment under the Interpretation (Amendment) Act 1997 (Act A996) and became effective on 25 July 1997.

This would be after the National Land Finance Co-Operative (supra). In my view, the law is now clear beyond doubt. Section 17A above enjoins the purposive approach to statutory interpretation. This applies to all statutes including taxing statutes.

[63] In his concurring judgement His Lordship Haidar, FCJ (as he then was) also took a similar view in stating that:

C [2] I would, in addition, like to expressly state that I agree with the reasons advanced by my learned brother, Chief Judge (Sabah and Sarawak) in answering the questions posed for our consideration. It is clear beyond doubt that in view of s 17A of the Interpretation Acts 1948 and 1967 there is now a statutory recognition for the courts to take a purposive approach in the interpretation of statutes including taxing statutes.

[64] We are also of the similar view that in considering the proper statutory construction of a taxing statute, one which would promote the purpose of the Act in question must be adopted. In our judgment the Minister's power to impose cess as was done in this case for the purpose of subsidising the price of cooking oil must be viewed against the background, scheme and circumstances under which the 2007 Order was promulgated. In this regard we find that the Act has given the Minister enough guidance in the use of his discretion to decide whether cess can be collected to subsidise the price of cooking oil.

[65] To illustrate the above point, we wish to highlight here that under the Act, the Minister is empowered to appoint members of the Board; the power to give general directions where the Board shall be responsible to the Minister as stipulated under s. 15(1) and (2) of the Act; to determine the contribution to such organisations related to the oil palm industry (s. 33(d)); to approve making contributions to any organisation whether within or outside Malaysia for the purpose of promoting the marketing of oil palm products (s. 33(i)); to make order for the imposition, variation or cancellation of cess on oil palm products after consultation with the Minister of Finance (s. 35(1) of the Act); to approve borrowing money and investment by the Board (s. 38 and 39); to exempt any person or class of persons or any oil palm product from all or any of the provisions of the Act and may impose any terms and conditions as he thinks fit on any exemption (s. 77(1) and (2)); and to make regulations for all or any of the purposes listed in the Act as stated in s. 78(1) (a) - (n) of the Act.

[66] The Board's objectives are based on the nature of the primary commodity, on which the Board is responsible. This is stipulated under s. 3(2) of the Act which provides:

(2) The objectives of the Board are-

(a) To promote and develop the oil palm industry of Malaysia; and

(b) To develop national objectives, policies and priorities for the orderly development and administration for the oil palm industry of Malaysia.

[67] The functions and powers of the Board are stated under s. 4(a)-(q) and s. 5(a)-(j) as follows:

Functions of Board

4. The functions of the Board shall be:

(a) to implement policies and developmental programmes to ensure the viability of the oil palm industry of Malaysia;

(b) to conduct and promote research and development activities relating to the planting, production, harvesting, extraction, processing, storage, transportation, use, consumption and marketing of oil palm and oil palm products;

(c) to plan, coordinate, implement and monitor all research and development activities on oil palm and oil palm products;

(d) to regulate, register, coordinate and promote all activities relating to the planting, supply, sale, purchase, distribution, movement, storage, surveying, testing, inspecting, brokering, export and import of oil palm products, and the milling of oil palm fruit;

(e) to develop and commercialize research findings for the benefit of the oil palm industry and to promote the use of the research findings commercially;

(f) to provide technical, advisory and consultancy services to the oil palm industry;

(g) to promote the efficient marketing and handling of oil palm products;

(h) to develop and maintain markets for oil palm products;

(i) to promote, control and monitor measures towards attaining a high quality for oil palm products;

(j) to plan and implement training programmes and human resource development in line with the needs of the oil palm industry;

(k) to liaise and coordinate with other bodies within or outside Malaysia to further enhance the oil palm industry of Malaysia;

(l) to conduct research and development on oil seeds and other oils and fats other than palm oil where such research and development are for the enhancement of the oil palm industry;

(m) to gather information and maintain records of all relevant matters relating to the oil palm industry;

(n) to be the resource and information centre of the oil palm industry;

(o) to publish or sponsor the publication of journals, periodicals, booklets and other publications and to collect, collate and disseminate information relating to oil palm, oil palm products and other vegetable and animal oils and fats;

(p) to conduct research and development in any other area where the results of the research and development are intended to benefit the oil palm industry; and

(q) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

Powers of Board

5. The Board shall have power:

(a) to undertake and coordinate activities relating to research and development into the planting, production, harvesting, extraction, processing, storage, transportation, use, consumption and marketing of oil palm and oil palm products including oil palm and oil palm product wastes, and services related thereto;

(b) to impose fees or any other charges it deems fit for the use of any facility relating to research, investigation, testing, advisory services or any other service provided by the Board;

(c) to enter into such negotiations and agreements or arrangements as it deems fit for the discharge of its functions;

(d) to acquire, hold, dispose of or grant rights in connection with the results of any research conducted by or for the Board or in connection with the results of any research undertaken by any person or organization;

(e) to commission any person or body to carry out research or development, or both;

(f) to award certificates of proficiency in respect of training and accredited programmes;

(g) to undertake and coordinate such activities as it deems necessary for the purpose of protecting and furthering the interests of the oil palm industry of Malaysia;

(h) to regulate the oil palm industry, including by the implementation of registration and licensing schemes;

(i) to prescribe the standards or grades of oil palm and oil palm products; and

(j) to do such other things as it deems fit to enable it to perform its functions effectively or which are incidental to the performance of its functions.

[68] As can be seen from the above, the Board is a statutory body which not only regulates oil palm industry including its end product, palm oil, as defined, it also functions as the promoter, marketing and distributer of palm oil. A closer scrutiny of s. 4 would connote that the Board plays a pivotal role in implementing policies and development. The rationale for imposition of the cess for stabilising the price of cooking oil can be inferred from the broad array of Ministerial powers and powers of the Board as prescribed by the Act which we have discussed above. Thus, we have no hesitation to hold that the 2007 Order issued under s. 35 of the Act for the purposes of subsidising the cooking oil is valid. Given the wide scope of powers endowed upon the Minister and the Board, *prima facie* it can be concluded that the power to impose cess for the purpose subsidizing price of cooking oil is found to be inherent in the Act itself.

[69] In this regard we should stress here that s. 35 of the Act cannot be read in isolation from the rest of the provisions of the Act to understand the purpose behind the imposition of cess on oil palm product to stabilise the price of cooking oil. This has been elucidated earlier but deserves to be reiterated. As stated earlier one of Board's functions is to regulate and promote all activities relating to, planting, supply, sale, purchase, distribution, movement, storage and also the powers to undertake and coordinate such activities as it deems necessary for the purpose of protecting and furthering the interests of the oil palm industry of Malaysia, following s. 4(d) and s. 5(g) of the Act as stated above.

[70] Our careful examination in interpreting the whole of the Act finds that the Board is not only to regulate but also to promote all activities in the oil palm industry. Therefore we find that the payment of subsidy to reduce the production costs suffered by the millers and packers as decided in the Board runs in tandem with Parliament's intention to reduce production costs in the upstream activity as well as to continually improve the output on palm oil products. We agree with the submission advanced by the Appellants in that when one speaks of the objectives, role and functions of the Board, one cannot view them in the narrow sense but must be viewed in the context of the industry, inclusive of the interest and welfare of the consumer public. Collection of cess for subsidising the price of cooking oil as was done in this case was to alleviate the losses suffered by the millers and packers.

[71] In these circumstances we find that the cess collected under the Cess Order 2007 can be utilised to subsidize the price of cooking oil. We are of the view that the Minister had the authority to stabilise the price of cooking oil resulting from the increase of the price of the Crude Palm Oil through imposition of the cess which was well within the objectives, role and function of the Board as prescribed in the Act.

A

Conclusion

[72] To sum up, our findings based on the issues canvassed and argued before us are as follows:

i. s. 35(1) of the Act is a valid tax statute which empowers the Minister
B to impose cess *via* subsidiary legislation and is not *ultra vires* art. 96 of the Constitution;

ii. the imposition of cess on a class of parties/individual under s. 35 of the Act and the exclusion of certain parties/individual from the same class is not a form of discrimination which is in breach of art. 8 of the
C Constitution; and

iii. the collection of cess via 2007 Order for the purposes of subsidizing the price of cooking oil was within the listed purposes of s. 33(1) of the Act, after taking into consideration the broad objectives of the Act ie, for the orderly development and administration of the oil palm industry of
D Malaysia.

For the aforesaid reasons we allow the appellants' appeals with costs. The orders of the courts below are hereby set aside.

E

F

G

H

I